165-606

165-606.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. ~~866~~ ~~497~~ 201

FREDERICK N. PAULY, RECEIVER OF THE CALIFORNIA NATIONAL BANK OF SAN DIEGO, PLAINTIFF IN ERROR,

vs.

THE STATE LOAN AND TRUST COMPANY.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

FILED DECEMBER 17, 1894.

(15,750.)

(15,750.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 866.

FREDERICK N. PAULY, RECEIVER OF THE CALIFORNIA NATIONAL BANK OF SAN DIEGO, PLAINTIFF IN ERROR,

vs.

THE STATE LOAN AND TRUST COMPANY.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 22, 1894.

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1–4 United States Circuit Court of Appeals for the Ninth Circuit.

Transcript of Record.

FREDERICK N. PAULY, Receiver of the California National Bank of San Diego, Plaintiff in Error,
vs.
THE STATE LOAN AND TRUST COMPANY (a Corporation), Defendant in Error.
No. 137.

In error to the circuit court of the United States for the southern district of California.

Endorsed: Printed record. Filed Sep. 20, 1893. F. D. Monckton, clerk.

5 In the United States Circuit Court of Appeals for the Ninth Circuit.

FREDERICK N. PAULY, Receiver of the California National Bank of San Diego, Plaintiff in Error,
vs.
THE STATE LOAN AND TRUST COMPANY (a Corporation), Defendant in Error.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of California, Greeting:

Because in the record and proceeding, and also in the rendition of the judgment of a plea which is in the said circuit court, before you, between Frederick N. Pauly, receiver of the California National Bank of San Diego, as plaintiff, and The State Loan and Trust Company, a corporation, as defendant, a manifest error hath happened, to the great damage of the said Frederick N. Pauly, receiver of the California National Bank of San Diego, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if
6 judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of appeals for the ninth circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, on the eleventh day of September next, in the said United States circuit court of appeals, to be there and then held, that, the record and proceedings aforesaid be- inspected, the said United

States circuit court of appeals may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 14th day of August, in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States the one hundred and eighteenth.

[SEAL.] WM. M. VAN DYKE,
Clerk of the U. S. Circuit Court for the Southern District of California.

The above writ of error is hereby allowed.

ROSS,
District Judge.

(Endorsed:) Writ of error. I hereby certify that a copy of the within writ of error was on the 14th day of August, 1893, lodged in the clerk's office of the said United States circuit court, for the southern district of California, for the said defendant in error. Wm. M. Van Dyke, clerk U. S. circuit court, southern district of California. Filed August 14, 1893. Wm. M. Van Dyke, clerk.

7 UNITED STATES OF AMERICA, *ss:*

To the State Loan and Trust Company, a corporation, Greeting:

You are hereby cited and admonished to be and appear at a United States circuit court of appeals, for the ninth circuit, to be held at the city of San Francisco, in the State of California, on the 11th day of September, A. D. 1893, pursuant to a writ of error on file in the clerk's office of the circuit court of the United States, of the ninth judicial circuit, in and for the southern district of California, wherein Frederick N. Pauly, receiver of the California National Bank of San Diego, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment given, made and rendered against the said Frederick N. Pauly, receiver of the California National Bank of San Diego, in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Erskine M. Ross, United States district judge, for the southern district of California, and one of the judges of the United States circuit court, for the southern district of California, this 14th day of August, A. D., 1893, and of the Independence of the United States the one hundred and eighteenth.

E. M. ROSS,
U. S. District Judge for the Southern District of California.

(Endorsed:) Citation. Received copy of the within citation this 14th day of August, 1893. W. P. Gardiner, att'y for def't. Filed Aug. 14, 1893. Wm. M. Van Dyke, clerk.

8 *The Answer of the Judges of the Circuit Court of the United States, of the Ninth Judicial Circuit, in and for the Southern District of California.*

The record and all proceedings of the complaint whereof mention is within made, with all things touching the same, we certify under the seal of our said circuit court, to the United States circuit court of appeals, for the ninth circuit, in a certain schedule to this writ annexed, as within we are commanded.

By the court.

[SEAL.] WM. M. VAN DYKE, *Clerk.*

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

FREDERICK N. PAULY, Receiver of the California National Bank of San Diego, Plaintiff,
vs.
THE STATE LOAN & TRUST COMPANY (a Corporation), Defendant.

Plaintiff, Frederick N. Pauley, receiver of the California National Bank of San Diego, complains of defendant, and alleges:

I.

That the defendant is now and at all the times hereinafter mentioned was a corporation organized and existing under and by virtue of the laws of the State of California, having its principal place of business at the city of Los Angeles, county of Los Angeles, State of California.

9 II.

That the California National Bank of San Diego, located and established at the city of San Diego, State of California, southern district of California, was duly organized as a bank under an act of Congress, entitled, "An act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, 1864, and the acts amendatory thereof and supplemental thereto.

III.

That heretofore, to wit: on the 12th day of November, 1891, said California National Bank of San Diego became and is insolvent; and upon said date failed and suspended operations as a banking association.

IV.

That afterwards, on the 18th day of December, 1891, the Comptroller of the Currency of the United States, under and by virtue of the provisions of the national bank act, and the amendments

thereto, appointed plaintiff, Frederick N. Pauly, receiver of said bank. That plaintiff, as such receiver, gave the bond required by law and the order of said comptroller and entered upon and has ever since discharged the duties of said trust.

V.

That at all dates and times since the said 12th day of November, 1891, the assets of said California National Bank of San Diego were and are insufficient to pay its debts.

10 VI.

That the Comptroller of the Currency of the United States, under and by virtue of the provisions of the act of Congress aforesaid, heretofore, on the 5th day of May, 1892, made an assessment upon the shareholders of said California National Bank of San Diego for five hundred thousand dollars, to be paid by them equally and ratably on or before the eighteenth day of June, 1892; and which assessment was so equally and ratably made upon such shareholders to the amount of one hundred per centum of the par value of the shares of capital stock of such association, held or owned by them respectively at the time of its failure and suspension; and upon said 5th day of May, 1892, made his order directing plaintiff as such receiver to institute suits to enforce against each shareholder his personal liability as such to said extent.

VII.

That the defendant was at the time of said suspension and failure of said bank a shareholder of its capital stock to the amount of two hundred shares, of the par value of one hundred dollars per share, and held, or was entitled to hold, in his possession or control, the usual stock certificate as such stockholder.

VIII.

That by reason of the premises, the defendant on the 5th day of May, 1892, became and was indebted and liable to plaintiff for twenty thousand dollars, with interest thereon from June 18th, 1892, the date of the order of such assessment.

11 IX.

That on the 15th day of May, 1892, plaintiff, as such receiver, gave notice in writing to defendant of such assessment, and made demand upon defendant therefor. That defendant, although demanded, has failed and refused to pay said assessment, or any part thereof.

Wherefore, plaintiff prays judgment against defendant for the sum of twenty thousand dollars, with interest thereon at the rate of seven per cent. from June 18th, 1892, and for costs of suit.

M. T. ALLEN,
Attorney for Plaintiff.

STATE OF CALIFORNIA, }
County of Los Angeles, } *ss:*

Frederick N. Pauly, being first duly sworn, deposes and says: That he is the plaintiff in the above-entitled action.

That he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge except as to the matters as are therein stated upon information and belief; and as to those matters, he believes them to be true.

FREDERICK N. PAULY.

Subscribed and sworn to before me, this fifteenth day of October, 1892.

[SEAL.] FRANK P. FLINT,
Notary Public in and for Los Angeles County, State of California.

(Endorsed:) No. 531. In the circuit court of the United States, ninth circuit, southern district of California. Frederick N.
12 Pauly, receiver, etc., *vs.* State Loan and Trust Company, a corporation. Complaint. Filed October 18th, 1892, Wm. M. Van Dyke, clerk. M. T. Allen, attorney for plaintiff, post-office building, Los Angeles, California.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

FREDERICK N. PAULY (Receiver of the California National Bank of San Diego), Plaintiff,
vs.
THE STATE LOAN AND TRUST COMPANY (a Corporation), Defendant. } No. 531.

Answer.

Comes now the defendant, State Loan and Trust Company of Los Angeles, a corporation, and answers the complaint of plaintiff in the above-entitled cause as follows, to wit:

I.

Defendant has no information or belief upon the subject sufficient to answer the allegations of paragraph II of said complaint, and upon that ground denies said allegations; and upon the same ground denies that said California National Bank of San Diego was duly organized as a bank under the act of Congress mentioned in said paragraphs, or under any act of Congress.

II.

Defendant has no information or belief upon the subject
13 sufficient to enable it to answer the allegations of paragraph IV of said complaint, and upon that ground denies said alle-

gations, and upon the same ground denies that said Frederick N. Pauly was by the Comptroller of Currency of the United States duly or legally appointed receiver of said bank.

III.

Defendant has no information or belief upon the subject sufficient to enable it to answer the allegations of paragraph V of said complaint, and upon that ground denies the same; and upon the same ground denies that at all or any dates or times since the 12th day of November, 1891, the assets of said California National Bank of San Diego were, or are, sufficient to pay its debts.

IV.

Defendant has no information or belief upon the subject sufficient to enable it to answer the allegations of paragraph VI of said complaint, and upon that ground denies each and every one of said allegations.

V.

This defendant denies that it was at the time of suspension and failure of said California National Bank of San Diego, alleged in said complaint, or at any time, or at all a shareholder of the capital stock of said California National Bank of San Diego to the amount of two hundred shares of the par value of $100.00 per share, or any other number of shares, or in any shares whatever of the par value of $100.00 per share, or any other par value.

This defendant denies that it was at the time alleged in said complaint, or ever, or at all, a shareholder of any capital stock
14 whatever in said so-called California National Bank of San Diego of the par value of $100.00 per share, or of any par value, or at all.

This defendant denies that at the time alleged in said complaint, or ever, or at all, it held or was entitled to hold in its possession or control the usual stock certificates, or any other stock certificates as such stockholder.

This defendant denies that it ever held, or was entitled to hold in its possession or control any certificate of stock of said so-called California National Bank of San Diego of any character or form whatever, except as hereinafter specifically set forth.

VI.

This defendant denies that by reason of the premises, or of the allegations set forth in said complaint, or for any reason, it, on the 5th day of May, 1892, or ever, or at all, became or was indebted or liable to plaintiff for twenty thousand dollars, with interest thereon from June 18th, 1892, or for any other sum or amount whatever.

Defendant denies that it ever or at all became, or was, or is, indebted or liable to plaintiff for the sum of twenty thousand dollars, with interest thereon, or for any other sum or amount whatever.

And further answering said complaint, this defendant alleges that on or about the 24th day of January, 1891, one S. G. Havermale and one D. D. Dare were indebted to this defendant upon their promissory note executed to this defendant in the sum of twelve thousand five hundred dollars, besides interest thereon; that at that time, to wit, about the 24th day of January, 1891, said S. G. Havermale was the owner and holder of a certain so-called certificate numbered 286, issued to and in the name of said S. G. Havermale and purporting to be a certificate for one hundred shares of capital stock of said so-called California National Bank of San Diego.

That, at the same time, to wit, about the 24th day of January, 1891, one J. W. Collins was the owner and holder of a certain so-called certificate, numbered 297, issued to and in the name of said J. W. Collins, and purporting to be a certificate for one hundred shares of capital stock of said so-called California National Bank of San Diego.

That, thereupon, to wit, about the 24th day of January, 1891, said S. G. Havermale surrendered to said so-called California National Bank of San Diego said so-called certificate, number 286, and said J. W. Collins, at the same time, surrendered to said so-called California National Bank of San Diego, said so-called certificate, number 297, and said Havermale and Collins thereupon, respectively, caused said so-called California National Bank of San Diego to cancel said respective certificates, numbered 286 and 297 respectively, and to issue in lieu thereof to "State Loan and Trust Company, pledgee," but in trust nevertheless, two other certain so-called certificates, numbered respectively 308 and 309, each purporting to be a certificate for one hundred shares of the capital stock of said so-called California National Bank of San Diego.

That said so-called certificates, numbered respectively 308 and 309, were issued in the name of State Loan and Trust Company of Los Angeles, pledgee, and said State Loan and Trust Company of Los Angeles, as such pledgee received said so-called certificates and said stock in trust nevertheless, but not otherwise, and as collateral security for the payment of said note, executed to defendant by S. G. Havermale and D. D. Dare, and ever since that time has held said so-called certificates and the so-called stock thereby represented in its name as pledgee, and as collateral security for the payment of said note, and for the unpaid balance of the debt thereby represented, but in trust, nevertheless, and not otherwise.

This defendant alleges that it never was the owner of said so-called certificates, or of said so-called stock, or of any certificates, or of any stock of said so-called California National Bank of San Diego, and never held said certificates or said stock, or any certificates or any stock in said so-called California National Bank of San Diego, except as pledgee aforesaid, and in trust as collateral security for the payment of said note, and for the unpaid balance of the debt thereby represented. And this defendant, upon information and belief, alleges that said S. G. Havermale and said J. W. Collins

were at all the times herein mentioned, and still are, the owners of said two hundred shares of stock and said so-called certificates numbered 308 and 309; and further alleges that the books, corporate books, stub books, and stub certificate books, of said so-called California National Bank of San Diego have, ever since the date of the issuance of said so-called certificates, numbered 308 and 309 respectively, shown the manner and form in which the same were issued, to wit, to State Loan and Trust Company of Los Angeles, pledgee; that the corporate books, stub books and stub certificate books, do show, and ever since the issu-
17 ance of said so-called certificates, numbered 308 and 309 have shown that the two certificates last aforesaid were issued to said State Loan and Trust Company of Los Angeles, pledgee, in lieu of and instead of said so-called certificates, numbered 286 and 297 respectively, which said two certificates last aforesaid were, on or about the 24th day of January, 1891, by said Collins and Havermale, surrendered to said so-called California National Bank of San Diego, for cancellation, and were thereupon cancelled, and none of said shares of stocks have ever stood upon the books of said so-called California National Bank of San Diego, except in the manner hereinbefore stated; that State Loan and Trust Company of Los Angeles, a corporation, has never appeared upon the books of said so-called California National Bank of San Diego as the owner or holder of said so-called stock, or any part thereof, or at all.

This defendant alleges that there was never kept, or caused to be kept, at any time, by the president and cashier of said so-called California National Bank of San Diego, or by either of them, or at all, any list of the names and residences of all, or of any of the shareholders of said so-called California National Bank of San Diego, and the number of shares held by each, in which said State Loan and Trust Company of Los Angeles, either as pledgee, or otherwise, was designated as the owner or holder of any stock in said so-called California National Bank of San Diego; that no list of stockholders was kept in the office of said so-called California National Bank
18 of San Diego, wherein State Loan and Trust Company of Los Angeles, either as pledgee or otherwise, was designated as a stockholder of said bank.

This defendant alleges that on or about the first day of August, 1891, a dividend upon the stock of said so-called California National Bank of San Diego, was declared by its officers and paid as dividend No. 5, thereupon amounting to about $2.50 per share; that said dividend No. 5 upon the two hundred shares of stock represented by said so-called certificate- numbered 308 and 309 was paid by said so-called California National Bank of San Diego to said Collins and Dare, jointly, by and with the consent of said S. G. Havermale; that this defendant never received any dividend or profit from said so-called stock; that it never owned or held said so-called stock, or any part thereof, except as trustee aforesaid.

Wherefore, this defendant prays judgment for its costs herein incurred; that plaintiff take nothing; that defendant be allowed to

go hence without day; and for such other relief as may be equitable and just.

W. P. GARDINER,
Attorney for Defendant.

STATE OF CALIFORNIA, }
County of Los Angeles, } ss:

J. F. Towell, being first duly sworn, on his oath, says that he is an officer, to wit: Secretary of State Loan and Trust Company of Los Angeles, a corporation, defendant in the above-entitled action; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information or belief, and as to those matters that he believes it to be true.

J. F. TOWELL.

Subscribed and sworn to before me, this 31st day of December, 1892.

[SEAL.] H. S. ROLLINS,
Notary Public.

(Endorsed:) No. 531. In the circuit court of the United States, ninth circuit, southern district of California. Frederick N. Pauly, receiver, plaintiff, *vs.* State Loan and Trust Company of Los Angeles, a corporation, defendant. Answer—received copy of the within answer this 31st day of December, 1892. M. T. Allen, attorney for plaintiff. Filed Dec. 31, 1892. Wm. M. Van Dyke, clerk. W. P. Gardiner, attorney *for plaintiff.*

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

FREDERICK N. PAULY, Receiver of the California National Bank of San Diego, Plaintiff,
vs.
THE STATE LOAN & TRUST COMPANY (a Corporation), Defendant. } No. —.

Findings of Fact and Conclusions of Law.

This cause came regularly on for trial on the 3rd day of March, 1893, before the court without a jury—a jury trial having been duly waived by the parties to said cause—M. T. Allen, Esq., appearing as attorney for plaintiff; W. P. Gardiner, appearing as attorney for defendant, and the court having heard the evidence introduced upon the behalf of the respective parties to the cause, doth now from said evidence find the facts to be as follows, to wit:

I.

That the California National Bank of San Diego was duly organized as a bank under the act of Congress entitled "An act to provide

a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof. Approved June 3rd, 1864, and the acts amendatory thereof and supplemental thereto."

II.

That on the 18th day of December, 1891, the Comptroller of the Currency of the United States, under and by virtue of the provisions of the national bank act and amendments thereto, appointed Frederick N. Pauly receiver of said California National Bank of San Diego; that said Pauly as such receiver gave bonds required by law and the order of said comptroller, and has ever since discharged the duties of said trust.

III.

That at all the dates and times since the 12th day of November, 1891, the assets of said California National Bank of San Diego were, and are sufficient to pay its debts.

IV.

That the Comptroller of the Currency of the United States, under and by virtue of the provisions of the act of Congress aforesaid, did on the 5th day of May, 1892, make an assessment upon the shareholders of the said California National Bank of San Diego for five hundred thousand dollars, to be paid by them equally and regularly on or before the 18th day of June, 1892, which said assessment was so equally and ratably made upon such shareholders to the amount of one hundred per centum of the par value of the shares of capital stock of such association held or owned by them respectively at the time of its failure or suspension, and upon said 5th day of May, 1891, said comptroller made his order directing plaintiff, as such receiver, to institute suits to enforce against each shareholder his personal liability as such to said extent.

21

V.

That on the 15th day of May, 1892, plaintiff, as such receiver, gave notice in writing to defendant of the aforesaid assessment, and made demand upon the defendant therefor; that defendant has not paid the same or any part thereof.

VI.

That on or about the 24th day of January, 1891, one S. G. Havermale and one J. W. Collins, were indebted to defendant upon their promissory note by them executed to defendant in the sum of twelve thousand five hundred dollars, besides interest; that at that time said Havermale was the owner and holder of certificate No. 286, issued to said Havermale, being a certificate for one hundred shares of the capital stock of said California National Bank of San Diego.

That at the same time, to wit, about the 24th day of January, 1891, J. W. Collins was the owner and holder of a certificate numbered 297, issued to the said Collins, and being a certificate for one hundred shares of capital stock of said California National Bank of San Diego.

22

VII.

That thereupon, to wit, about the 24th day of January, 1891, said Havermale and said Collins endorsed said two certificates by writing their names across the backs thereof, and transferred and delivered the same to defendant, State Loan and Trust Company, of Los Angeles, as, and for collateral security for the payment of said note executed to said defendant by said Havermale and J. W. Collins.

That said certificates so endorsed as aforesaid were delivered to said State Loan and Trust Company of Los Angeles, at the city of Los Angeles, on or about the 24th day of January, 1891, and were thereupon promptly in ordinary course of mail transmitted to the said California National Bank of San Diego, at San Diego, and were surrendered to it, and new certificates numbered 308 and 309, respectively, were thereupon issued to said State Loan and Trust Company of Los Angeles as pledgee in lieu of said certificates numbered 286 and 297 respectively.

That said new certificates numbered 308 and 309, respectively set forth upon their faces that they were issued to said "State Loan and Trust Company of Los Angeles, pledgee," and each purported to be a certificate for one hundred shares of the capital stock of said California National Bank of San Diego.

That defendant has ever since that time held said certificates numbered 308 and 309 as pledgee, and as collateral security for the payment of said note and for the unpaid balance of the debt thereby represented.

23

VIII.

That, so far as appears in this action, except as aforesaid, defendant, State Loan and Trust Company of Los Angeles, never had, owned or held any shares of the capital stock of said California National Bank of San Diego, and never was entitled to hold the usual stock certificate as such stockholder to the amount of two hundred shares or to any other amount.

IX.

That except as pledgee of the aforesaid stock as represented by said certificates numbered 308 and 309 respectively, the name of the defendant, State Loan and Trust Company of Los Angeles, never was entered upon and never appeared upon or in the stock books or other corporate books of said California National Bank of San Diego as a stockholder thereof; that when said certificates, numbered 308 and 309 aforesaid, were issued to said defendant as

a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof. Approved June 3rd, 1864, and the acts amendatory thereof and supplemental thereto."

II.

That on the 18th day of December, 1891, the Comptroller of the Currency of the United States, under and by virtue of the provisions of the national bank act and amendments thereto, appointed Frederick N. Pauly receiver of said California National Bank of San Diego; that said Pauly as such receiver gave bonds required by law and the order of said comptroller, and has ever since discharged the duties of said trust.

III.

That at all the dates and times since the 12th day of November, 1891, the assets of said California National Bank of San Diego were, and are sufficient to pay its debts.

IV.

That the Comptroller of the Currency of the United States, under and by virtue of the provisions of the act of Congress aforesaid, did on the 5th day of May, 1892, make an assessment upon the shareholders of the said California National Bank of San Diego for five hundred thousand dollars, to be paid by them equally and regularly on or before the 18th day of June, 1892, which said assessment was so equally and ratably made upon such shareholders to the amount of one hundred per centum of the par value of the shares of capital stock of such association held or owned by them respectively at the time of its failure or suspension, and upon said 5th day of May, 1891, said comptroller made his order directing plaintiff, as such receiver, to institute suits to enforce against each shareholder his personal liability as such to said extent.

21

V.

That on the 15th day of May, 1892, plaintiff, as such receiver, gave notice in writing to defendant of the aforesaid assessment, and made demand upon the defendant therefor; that defendant has not paid the same or any part thereof.

VI.

That on or about the 24th day of January, 1891, one S. G. Havermale and one J. W. Collins, were indebted to defendant upon their promissory note by them executed to defendant in the sum of twelve thousand five hundred dollars, besides interest; that at that time said Havermale was the owner and holder of certificate No. 286, issued to said Havermale, being a certificate for one hundred shares of the capital stock of said California National Bank of San Diego.

That at the same time, to wit, about the 24th day of January, 1891, J. W. Collins was the owner and holder of a certificate numbered 297, issued to the said Collins, and being a certificate for one hundred shares of capital stock of said California National Bank of San Diego.

22

VII.

That thereupon, to wit, about the 24th day of January, 1891, said Havermale and said Collins endorsed said two certificates by writing their names across the backs thereof, and transferred and delivered the same to defendant, State Loan and Trust Company, of Los Angeles, as, and for collateral security for the payment of said note executed to said defendant by said Havermale and J. W. Collins.

That said certificates so endorsed as aforesaid were delivered to said State Loan and Trust Company of Los Angeles, at the city of Los Angeles, on or about the 24th day of January, 1891, and were thereupon promptly in ordinary course of mail transmitted to the said California National Bank of San Diego, at San Diego, and were surrendered to it, and new certificates numbered 308 and 309, respectively, were thereupon issued to said State Loan and Trust Company of Los Angeles as pledgee in lieu of said certificates numbered 286 and 297 respectively.

That said new certificates numbered 308 and 309, respectively set forth upon their faces that they were issued to said "State Loan and Trust Company of Los Angeles, pledgee," and each purported to be a certificate for one hundred shares of the capital stock of said California National Bank of San Diego.

That defendant has ever since that time held said certificates numbered 308 and 309 as pledgee, and as collateral security for the payment of said note and for the unpaid balance of the debt thereby represented.

23

VIII.

That, so far as appears in this action, except as aforesaid, defendant, State Loan and Trust Company of Los Angeles, never had, owned or held any shares of the capital stock of said California National Bank of San Diego, and never was entitled to hold the usual stock certificate as such stockholder to the amount of two hundred shares or to any other amount.

IX.

That except as pledgee of the aforesaid stock as represented by said certificates numbered 308 and 309 respectively, the name of the defendant, State Loan and Trust Company of Los Angeles, never was entered upon and never appeared upon or in the stock books or other corporate books of said California National Bank of San Diego as a stockholder thereof; that when said certificates, numbered 308 and 309 aforesaid, were issued to said defendant as

pledgee, the entries in the books of said California National Bank of San Diego show that the same were issued to said defendant as pledgee and not otherwise.

X.

That the defendant did not, by reason of the premises or of any other facts alleged in the complaint, become and never was indebted to or liable to plaintiff for twenty thousand dollars ($20,000.00), with interest thereon, or for any sum.

And as conclusions of law from the foregoing facts the
24 court now finds and decides that plaintiff is not entitled to recover anything from defendant; that defendant is entitled to recover from plaintiff its costs incurred in this action, and it is hereby ordered that judgment be entered accordingly against the plaintiff and in favor of the defendant for its costs incurred herein.

Done in open court this 10th day of July, 1893.

ROSS,
District Judge.

(Endorsed:) No. 531. In the circuit court of the United States, ninth circuit, so. dist. of California, F. N. Pauly, receiver, plaintiff, *vs.* The State Loan and Trust Co., defendant. Findings of fact and conclusions of law. Filed Jul 10, 1893. Wm. M. Van Dyke, clerk. W. B. Gardiner, 61 to 63, Bryson-Bonebrake block, Los Angeles, Cal., attorney for defendant.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Judicial Circuit, Southern District of California.

FREDERICK N. PAULY (Receiver of the California National Bank of San Diego), Plaintiff, *vs.* THE STATE LOAN AND TRUST COMPANY (a Corporation), Defendant.	No. 531.

This cause came regularly on for trial on the 3d day of March, 1893, before the court without a jury, a jury trial having been duly waived by the parties to said cause, M. T. Allen, Esq., appear-
25 ing as attorney for plaintiff, W. P. Gardiner, Esq., appearing as attorney for defendant, and the court, having heard the evidence introduced upon the behalf of the respective parties to the cause, and the findings of fact and conclusions of law having been duly filed herein, and the court having ordered judgment to enter herein in favor of defendant and against the plaintiff in accordance with said findings of fact and conclusions of law—

Now, therefore, by virtue of the law, and by reason of the premises aforesaid, it is considered by the court that the plaintiff take

nothing by this cause, and that the defendant recover from the plaintiff its costs incurred in this action, taxed at the sum of $24.90.

Judgment entered July 10th, 1893.

WM. M. VAN DYKE, *Clerk.*

I, Wm. Van Dyke, clerk of the circuit court of the United States, for the southern district of California, do hereby certify the foregoing to be a full, true and correct copy of an original judgment made and entered by said court, July 10th, 1893, in the cause entitled Frederick N. Pauly, receiver of the California National Bank of San Diego, plaintiff, *vs.* The State Loan and Trust Company (a corporation), defendant, No. 531, and now remaining of record therein.

Attest my hand and the seal of said circuit court, this 10th day of July, A. D. 1893.

[SEAL.] WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 531. U. S. circuit court, ninth circuit,
26 southern district of California. Frederick N. Pauly, receiver of the California National Bank of San Diego, *vs.* The State Loan and Trust Company (a corporation). Certified copy of judgment. Filed Jul. 10, 1893. Wm. Van Dyke, clerk.

In the Circuit Court of the United States, Ninth Judicial Circuit, in and for the Southern District of California.

FREDERICK N. PAULY (Receiver of the California National Bank of San Diego), Plaintiff, *vs.* THE STATE LOAN AND TRUST COMPANY (a Corporation), Defendant.	No. 531.

I, Wm. M. Van Dyke, clerk of the circuit court of the United States, for the ninth judicial circuit, southern district of California, do hereby certify that the foregoing papers hereto annexed constitute the judgment-roll in the above-entitled action.

Attest my hand and the seal of the said circuit court, this 10th day of July, 1893.

[SEAL.] WM. M. VAN DYKE, *Clerk.*

(Endorsed:) No. 531. In the circuit court of the United States, ninth judicial circuit, for the southern district of California. Frederick N. Pauly, receiver of the California National Bank of San Diego, *vs.* The State Loan and Trust Company, a corporation. Judgment-roll. Filed July 10th, 1893. Wm. M. Van Dyke, clerk. Recorded Judgment Register Book No. 1, page 205.

27 In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

FREDERICK N. PAULY, Receiver of the Cal. Nat. Bank of San Diego, Plaintiff,
vs.
STATE LOAN & TRUST CO., Defendant.

It is stipulated that a jury be waived in this action, and said cause tried in court, and that this stipulation be filed as of March 3rd, 1892.

M. T. ALLEN,
Att'y for Pl'ff.
W. P. GARDINER,
Att'y for Def'ts.

(Endorsed:) Circuit court of the United States south. dist. Cal. Fred. N. Pauly, receiver, *vs.* State Loan & Trust Co. Stipulation filed as of March 3rd, 1893, pursuant to stipulation. Wm. M. Van Dyke, clerk.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

FREDERICK N. PAULY, Receiver of the California National Bank of San Diego, Plaintiff,
vs.
STATE LOAN AND TRUST COMPANY (a Corporation), Defendant.

28 The plaintiff, as receiver of an insolvent national bank, brings this suit against the defendant bank to recover the amount of an assessment on two hundred shares of the stock of the insolvent bank originally taken by the defendant as collateral security for $12,500, with interest thereon loaned by defendant to J. W. Collins and S. G. Havermale, upon that security and upon the promissory note of Havermale, endorsed by Collins. At the time of the loan Collins was president and Havermale one of the directors of the California National Bank of San Diego, and each was registered owner and holder of one hundred shares of its stock. The bank was then carrying on its ordinary business, and, so far as known to the defendant and the public, was perfectly solvent. Upon the making of the loan, and for the purpose of securing its repayment, with interest, Collins and Havermale each endorsed in blank his certificate for one hundred shares of the stock in question to defendant, and thereupon, and upon the application of the defendant to the bank whose stock was thus represented and assigned, that bank took up the two certificates issued to Collins and Havermale, and in lieu of them issued to the "State Loan & Trust Co. of Los Angeles, as pledgee," two certificates for one hundred shares each.

The defendant thus stood upon the registry of the national bank as the holder of two hundred shares of its stock "as pledgee," and

so stood at the time the bank became insolvent. The indebtedness to defendant for which the stock was given as security, though reduced in amount to $10,000, continued, and the question presented for decision is, whether under such circumstances defendant is liable for an assessment upon the two hundred shares of stock
29 for the benefit of the creditors of the insolvent bank. The statute providing for the association of persons for carrying on the business of banking, provides, among other things, as follows:

"The capital stock of each association shall be divided into shares of one hundred dollars each, and be deemed personal property and transferable on the books of the association in such manner as may be prescribed in the by-laws or articles of association. Every person becoming a shareholder by such transfer shall, in proportion to his shares, succeed to all the rights and liabilities of the prior holder of such shares; and no change shall be made in the articles of association by which the rights, remedies or security of the existing creditors of the association shall be impaired."

Revised Statutes, section 5139.

By section 5151 of the Revised Statutes, it is declared: "The shareholders of every national banking association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such association, to the extent of the amount of their stock therein, at the par value thereof in addition to the amount invested in such shares;" with certain exceptions not applicable to the present case.

Section 5152 is as follows: "Persons holding stock as executors, administrators, guardians or trustees, shall not be personally subject to any liabilities as stockholders, but the estates and funds in their hands shall be liable in like manner, and to the same extent as the testator, intestate, ward, or person interested in such trust funds, would be if living, and competent to act and hold the stock in his own name."

30 The precise question involved was not presented in any of the numerous cases that have been cited by counsel. But, in my opinion, the doctrine of the case of Anderson *vs.* Philadelphia Warehouse Company, 111 U. S., 479, carried to its logical conclusion, exempts the defendant from the liability with which it is sought to be charged. In that case the Supreme Court, while declaring it to be well settled that one who allows himself to appear on the books of a national bank as an owner of its stock, is liable to the creditors as a shareholder, whether he be the absolute owner or pledgee only, and that, if a registered owner, acting in bad faith, transfers his stock in a failing bank to an irresponsible person for the purpose of escaping liability, or if his transfer is colorable only, the transaction is void as to creditors, and that it is also true that the beneficial owner of stock registered in the name of an irresponsible person, may, under some circumstances, be liable to creditors as the real shareholder, said it knew of no case that held that a mere pledgee of stock is chargeable where he is not registered as owner.

In that case the Philadelphia Warehouse Company had loaned money on certain shares of the stock of the First National Bank of Allentown, which afterwards became insolvent, One William Kern, who was a member of the firm of W. H. Blumer & Company, and to which firm the loan was made was the registered holder of 490 shares of the stock of the bank, and, as security for the loan, he caused 450 shares standing in his own name on the books of the bank to be transferred, and a certificate to be issued therefor in the name of T. Charlton Henry, president—Henry being presi-
31 dent of the warehouse company. As soon as that fact became known to the directors and members of the executive committee of the company, they deemed it inadvisable to have the stock stand in the name of the president, and accordingly the certificate was thereupon transferred, under the seal of the company and the signatures of its president and secretary, to Dennis McCloskey, an irresponsible person, and a porter in its employ. With this assignment, the certificate was presented by the company to the bank, with the request for the issuance of a new certificate in the place of it in the name of McCloskey, and accordingly the stock was transferred to McCloskey on the books of the bank, and a new certificate issued in his name and delivered to the warehouse company. McCloskey never had possession of the certificate, and, at the request of the company, he executed in blank an irrevocable power of attorney for the sale and transfer of the stock. He subsequently died, and after his death the stock was transferred on the books of the bank, at the request of the company, to another one of its employees, who was also an irresponsible person, and who endorsed thereon an irrevocable power of attorney for its transfer, and in whose name it stood at the time of the failure of the bank. All of this was done with the avowed purpose on the part of the company to avoid incurring liability as a shareholder of the bank. The circumstances of the case were such as to satisfy the court that the company acted throughout the transaction in good faith, and without any fraudulent intent.

Such being the facts, the court declared the law to be that
32 the warehouse company never was the owner of the stock; that its transfer was only by way of pledge, and that the company was bound to return it whenever the debt for which it was held should be paid; that "there was never a time, from the date of the original transfer by Kern, on the books, until the failure of the bank, that it was or pretended to be anything else than a mere pledgee. Those who examined the list of shareholders," said the court, "would have found the name of McCloskey, or of Ferris, as the registered holder of four hundred and fifty shares. There was nothing on the books of the bank to connect them, or either of them, with the warehouse company, and, therefore, no credit could have been given on account of the apparent liability of the company as a shareholder. If inquiries had been made, and all the facts ascertained, it would have been found that either Kern or Blumer & Co. were always the real owners of the stock, and that it had been placed in the name of the persons who appeared on the

registry, not to shield any owner from liability, but to protect the title of the company as pledgee. Blumer & Co. and the bank were fully advised who McCloskey was, and of his probable responsibility, when they allowed the transfer to be made to him, and they undoubtedly knew who Ferris was when the stock was put in his name after McCloskey's death. The avowed purpose of both transfers was to give the company the control of the stock for the purposes of its security, without making it liable as a registered shareholder. To our minds there was neither fraud or illegality in this. The company protected its security as pledgee, without making itself liable as an apparent owner. Kern or Blumer & Co. still remained
33 the owners of the stock, though registered in the name of others, and pledged as collateral security for their debt. They consented to the transfer, not to escape the liability as shareholders, but to save the company from a liability it was unwilling to assume and at the same time to perfect the security it required for the credit to be given. As between Blumer & Co. and the warehouse company, Blumer & Co. or Kern were the owners of the stock and the company the pledgee. As between the company and the bank, or its creditors, the company was a pledgee of the stock, and liable only as such. The creditors were put in no worse position by the transfers that were made than they would have been if the stock had remained in the name of Kern or Blumer & Co., who were always the real owners.

"To our minds the fact that the stock stood registered in the name of Henry, president, from December 27th to January 10th, is, under the circumstances of this case, of no importance. The warehouse company promptly declined to allow itself to stand as a registered shareholder, because it was unwilling to incur the liability such a registry would impose. It asked that the transfer might be made to McCloskey. To this the owners of the stock and the bank assented, and from that time the case stood precisely as it would if the transfer had originally been made to McCloskey instead of Henry, president, or if Henry had retransferred to Kern or Blumer & Co., and they had at the request of the company made another transfer to McCloskey."

It seems to me there was stronger ground for holding the
34 warehouse company liable in the case from which the quotation has been made than there is for holding the defendant in the present case liable. Here, it is not pretended that there was any fraudulent conduct on the part of the defendant. There, that claim was made, and it constituted the ground of the dissenting opinion of two of the justices of the court. If the holding of the stock as pledgee rendered the warehouse company liable under the statute, it could not have relieved itself of that liability by causing the stock to be placed upon the books of the bank and a certificate therefor to be issued in the name of one of its irresponsible employees, for the same case declares it to be well settled that a liability incurred cannot be so avoided. The warehouse company was without any liability because, being pledgee only, it was not the real owner of the stock, and it was not liable as the ap-

parent owner because it did not appear upon the records of the bank as such apparent owner, and hence no one could have been misled by its acts.

Applying this reasoning to the case at bar, the defendant bank must be held not liable. If, as held in Anderson *vs.* Warehouse Company, a pledgee is not liable because not the real owner of the stock, it is manifest that the record of the truth upon the books and certificate of the bank that the stock is held in pledge, cannot render such pledgee liable; any and every person dealing with the bank is thereby apprised that the pledgee only holds the stock as security for some debt or obligation, and that the real owner of it is the pledgor, to whom he must look for the statutory liability.

It results that there must be judgment for the defendant, and it is so ordered.

ROSS,
District Judge.

35 (Endorsed:) No. 531. U. S. circuit court, southern district of California. Frederick N. Pauly, receiver, etc., plaintiff, *vs.* State Loan and Trust Company (a corporation), defendant. Opinion. Filed Jun- 12, 1893. Wm. M. Van Dyke, clerk.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

FREDERICK N. PAULY, Receiver of the California National Bank of San Diego, Plaintiff in Error,
vs.
STATE LOAN AND TRUST COMPANY (a Corporation), Defendant in Error.

The plaintiff in error respectfully petitions the above-named court for its allowance of writ of error returnable in the United States circuit court of appeals, for the ninth circuit, to review the judgment of the circuit court in and for the ninth circuit, southern district of California, given, made and rendered therein on the 10th day of July, 1893, in favor of the above-named defendant in error, and against the above-named plaintiff in error, in an action at law in said circuit court, for the recovery of the sum of twenty thousand dollars, with interest thereon from the 18th day of June, 1892, alleged to be due from defendant in error to plaintiff in error, by reason of said defendant in error, being the owner and holder of two hundred shares of capital stock of the California National
36 Bank of San Diego, a corporation, organized and existing under the national bank act, and which sum was the amount which said defendant in error was on said 5th day of May, 1892, by the Comptroller of the Currency of the United States, notified to pay to the plaintiff in error as the amount and sum equal to the par value of the shares of stock held and owned by said defendant in error, in said bank, and for which said defendant in error was

equally and ratably liable for the debts and obligations of said bank.

Your petitioner further shows, that the amount and matter in dispute in said proceeding and cause is and was twenty thousand dollars, exclusive of costs and interest.

Your petitioner will present and file with the clerk of the court below, to wit: said circuit court of the United States, an assignment of errors alleged to have been committed upon the hearing and the determination of said action, and which said assignment of errors will point out separately each error inserted and intended to be urged, and upon the finding of such specifications, will ask said court to allow the same.

Your petitioner asks that an order *to* be made, fixing the amount of security which plaintiff in error shall give and furnish upon such appeal, and that upon giving such security all further proceedings in this court be suspended and stayed until the determination of said appeal by said United States circuit court of appeal-.

And your petitioner will ever pray.

M. T. ALLEN,
Attorney for Plaintiff in Error.

Let the writ issue as prayed for.

37 It is further ordered, that the bond be and the same is hereby fixed at one hundred dollars, to stay all further proceedings in this court until the determination of said appeal by said United States circuit court of appeals, and for damages and costs on appeal.

ROSS,
District Judge.

(Endorsed:) No. 531. In the circuit court of the United States, ninth circuit, southern district of California. Frederick N. Pauly, receiver, etc., plaintiff, *vs.* State Loan and Trust Co., defendant. Original petition. Filed Aug. 14th, 1893. Wm. M. Van Dyke, clerk. Allen & Flint, rooms 15, 16, 17, Farmers' and Merchants' Bank building, 232 N. Main street. Telephone 685. Los Angeles, Cal. Attorneys for plaintiff.

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

FREDERICK N. PAULY, Receiver of the California National Bank of San Diego, Plaintiff and Plaintiff in Error,
vs.
THE STATE LOAN AND TRUST COMPANY (a Corporation), Defendant and Defendant in Error.

Assignment of Errors.

The plaintiff in error herein assigns the following as errors committed by the court below, in the determination of this action, and the rendition of the judgment therein:

38 I.

The judgment against plaintiff in error in this cause is not supported by the special findings of fact made, returned and filed in this cause, for the reasons that such special findings of fact show that the certificates of stock numbered 286 and 287, each for one hundred shares of the capital stock of said California National Bank of San Diego, were issued to the defendant in error on the 24th day of January, 1891, in the name of State Loan and Trust Company, pledgee, and so stood upon the books of said bank at all times, and that said defendant in error was at all times and dates after said January 24th, 1891, a stockholder in said California National Bank of San Diego, and so stood upon the books of said bank as such stockholder.

II.

That the special findings of fact found by the court and filed in this case were and are insufficient to support the judgment rendered in this cause, for the reason that such special findings of fact show that defendant in error was at all times from and after the 24th day of January, 1891, and at the date of the commencement of this action, a stockholder in said National Bank of San Diego, to the amount of two hundred shares of the capital stock of said bank, and so stood upon the books of said corporation as such stockholder.

III.

That the special findings of fact found by the court and filed in this cause were and are insufficient to support the judgment rendered in this cause, or any judgment against the plaintiff
39 in error, for the reason that such special findings of fact show that before the 24th day of January, 1891, said defendant took and accepted the assignment and transfer of certificates of stock in said bank representing two hundred shares of its capital stock, and that afterwards such certificates were, by said defendant in error, surrendered to said bank and new certificates representing said two hundred shares issued in the name of the State Loan and Trust Company, pledgee; and that such certificates thereafter at all times stood upon the books of said bank in the name of said State Loan and Trust Company, pledgee; and said findings of fact show that the said defendant in error thereby became a stockholder in said bank, liable equally and ratably to the full amount of the par value of said shares of stock for the debts and contracts of said bank.

IV.

That the court erred in rendering judgment against plaintiff in error upon the special findings of fact found and filed in this cause.

V.

That the judgment of the court should have been rendered upon such findings of fact in favor of plaintiff in error and against de-

fendant in error, for the sum of twenty thousand dollars, and interest from June 18, 1892, according to the law of the land.

M. T. ALLEN,
Attorney for Plaintiff in Error.

(Endorsed:) No. 531. In the circuit court of the United States, ninth circuit, southern district of California. Frederick N.
40 Pauly, receiver, etc., plaintiff, *vs.* State Loan & Trust Co., defendant. Original assignment of errors. Filed Aug. 14, 1893. Wm. M. Van Dyke, clerk. Allen & Flint, rooms 15, 16, 17, Farmers' and Merchants' Bank building, 232 N. Main street, telephone 685, Los Angeles, Cal., attorneys for plaintiff.

At a stated term, to wit, the August term, A. D. 1893, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the southern district of California, held at the courtroom in the city of Los Angeles, on Monday, the fourteenth day of August, in the year of our Lord one thousand eight hundred and ninety-three:

Present: The Honorable Erskine M. Ross, district judge.

FREDERICK N. PAULY, Receiver of the California National Bank of San Diego, Plaintiff,
vs.
THE STATE LOAN AND TRUST COMPANY (a Corporation), Defendant. } No. 531.

On reading and filing the petition of Frederick N. Pauly, receiver of the California National Bank of San Diego, plaintiff in the above-entitled cause, praying for the allowance of a writ of error in the said cause, returnable before the United States circuit court of appeals for the ninth circuit, and on motion of M. T. Allen, Esq., of counsel for said plaintiff, it is ordered that said petition be and the same hereby is allowed and granted, and that a writ of error be allowed in said cause, returnable before the United States cir-
41 cuit court of appeals for the ninth circuit, on the 11th day of September, 1893, and that a certified transcript of the record and of all of the proceedings and papers upon which the judgment of the plaintiff was entered, be transmitted to said United States circuit court of appeals for the ninth circuit on said petitioner, Frederick N. Pauly, receiver of the California National bank, giving bond on appeal in the sum of one hundred dollars, ($100.)

In the Circuit Court of the United States, Ninth Circuit, Southern District of California.

FREDERICK N. PAULY, Receiver of the California National Bank of San Diego, Plaintiff in Error,
vs.
STATE LOAN AND TRUST COMPANY (a Corporation), Defendant in Error.

Bond.

Know all men by these presents, that we, M. H. Flint and W. B. Gard, both of the city and county of Los Angeles, State of California, are held and firmly bound unto the above-named State Loan and Trust Company in the sum of one hundred dollars, to be paid to the said State Loan and Trust Company, for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the 14th day of August, in the year of our Lord one thousand eight hundred and ninety-three.

42 Whereas, the above-named Frederick N. Pauly, receiver of the California National Bank of San Diego, has prosecuted an appeal to the United States circuit court of appeals for the ninth circuit; now, therefore, the condition of this obligation is such that if the above-named Frederick N. Pauly shall prosecute said appeal to effect and answer all damages and costs, if he fails to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

M. H. FLINT. [SEAL.]
W. B. GARD. [SEAL.]

Sealed and delivered and taken and acknowledged this 14th day of August, 1893, before me,

WM. M. VAN DYKE,
Commissioner of the United States Circuit Court,
Southern District of California.

UNITED STATES OF AMERICA,
Southern District of California, } ss.

M. H. Flint and W. B. Gard, each being duly sworn, deposes and says that he is a freeholder in said district, and is worth the sum of one hundred dollars in lawful money of the United States of America, exclusive of property exempt from execution, and over and above all debts and liabilities.

M. H. FLINT.
W. B. GARD.

Subscribed and sworn to before me, at Los Angeles, California, this 14th day of August, 1893.

WM. M. VAN DYKE,
Commissioner of the United States Circuit Court,
Southern District of California.

Approved:
ROSS,
District Judge.

43 (Endorsed:) No. 531. In the circuit court of the United States, ninth circuit, southern district of California. Frederick N. Pauly, receiver, etc., plaintiff, *vs.* State Loan and Trust Co., defendant. Original bond. Filed Aug. 14, 1893. Wm. M. Van Dyke, clerk. Allen & Flint, rooms 15, 16, 17, Farmers' and Merchants' Bank building, 232 N. Main street, telephone 685, Los Angeles, Cal., attorneys for plaintiff.

In the Circuit Court of the United States of the Ninth Judicial Circuit in and for the Southern District of California.

FREDERICK N. PAULY, Receiver of the California National Bank of San Diego, Plaintiff,
vs.
THE STATE LOAN & TRUST COMPANY (a Corporation), Defendant. } No. 531.

I, Wm. M. Van Dyke, clerk of the circuit court of the United States, of the ninth judicial circuit, in and for the southern district of California, do hereby certify that the foregoing 46 written and printed pages, numbered from 1 to 46 inclusive, and contained in one volume, are a full, true, and correct copy of the record, pleadings and proceedings in the above and therein entitled cause, and that the same, together, constitute the return to the annexed writ of error.

In testimony whereof, I have hereunto set my hand and
44 affixed the seal of the said circuit court, this 19th day of August, A. D. 1893.

[SEAL.] WM. M. VAN DYKE,
Clerk U. S. Circuit Court, Southern District of California.

(Endorsed:) No. 137. In the United States circuit court of appeals, for the ninth circuit. Frederick N. Pauly, receiver of the California National Bank of San Diego, plaintiff in error, *vs.* The State Loan and Trust Company, (a corporation), defendant in error. In error to the circuit court of the United States, of the ninth judicial circuit, in and for the southern district of California. Filed August 21, 1893. F. D. Monckton, clerk.

45 United States Circuit Court of Appeals for the Ninth Circuit.

FREDERICK N. PAULY, Receiver of the California National Bank of San Diego, Plaintiff in Error,
vs.
THE STATE LOAN AND TRUST COMPANY (a Corporation), Defendant in Error. } Endorsed: No. 137. Opinion. Filed November 14, 1893. F. D. Monckton, clerk.

In error to the circuit court of the United States for the southern district of California.

At law.—Action by Frederick N. Pauly, as receiver of an insolvent national bank to collect an assessment on two hundred shares

of the stock of said bank held by the defendant. Findings and judgment of the circuit court for defendant, affirmed.

M. T. Allen, for plaintiff in error.

W. P. Gardiner, for defendant in error.

Before McKenna, circuit judge, and Hanford, district judge.

HANFORD, *District Judge:*

The opinion of the judge who decided this case in the circuit court contains the following accurate and concise statement of the case and of the question at issue:

"The plaintiff, as receiver of an insolvent national bank, brings this suit against the defendant bank to recover the amount of an assessment on two hundred shares of the stock of an insolvent bank originally taken by the defendant as collateral security for $12,500 with interest thereon, loaned by defendant to J. W. Collins and S. G. Havermale, upon that security and upon the promissory note of Havermale endorsed by Collins. At the time of the loan Collins was president and Havermale one of the directors of the
46 California National Bank of San Diego, and each was registered owner and holder of one hundred shares of its stock. The bank was then carrying on its ordinary business, and, so far as known to the defendant and the public, was perfectly solvent. Upon the making of the loan, and for the purpose of securing its repayment, with interest, Collins and Havermale each endorsed in blank his certificate for one hundred shares of the stock in question to defendant, and thereupon, and upon the application of the defendant to the bank whose stock was thus represented and assigned, that bank took upon the two certificates issued to Collins and Havermale, and in lieu of them issued to the 'State Loan & Trust Company of Los Angeles, as pledgee,' two certificates for one hundred shares each."

The defendant thus stood upon the registry of the national bank as the holder of two hundred shares of its stock "as pledgee," and so stood at the time the bank became insolvent. The indebtedness to defendant, for which the stock was given as security, though reduced in amount to $10,000, continued, and the question presented for decision is, whether under such circumstances defendant is liable for an assessment upon the two hundred shares of stock for the benefit of the creditors of the insolvent bank. The statute providing for the association of persons for carrying on the business of banking, provides among other things, as follows:

"The capital stock of each association shall be divided into shares of one hundred dollars each, and be deemed personal property and transferable on the books of the association in such manner as may be prescribed in the by-laws or articles of association. Every person becoming a shareholder by such transfer, shall, in proportion to his shares, succeed to all rights and liabilities of the prior holder of such shares; and no change shall be made in the articles of association by which the rights, remedies or security of the existing creditors of the association shall be impaired."

Revised Statutes, section 5139.

By section 5151 of the Revised Statutes, it is declared:

"The shareholders of every national banking association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts and engagements of such association, to the extent of the amount of their stock therein, at the par value thereof in addition to the amount invested in such shares;" with certain exceptions not applicable to the present case.

47 Section 5152 is as follows: "Persons holding stock as executors, administrators, guardians or trustees, shall not be personally subject to any liabilities as stockholders, but the estates and funds in their hands shall be liable in like manner, and to the same extent as the testator, intestate, ward or person interested in such trust funds would be if living, and competent to act and hold the stock in his own name."

56 Fed. Rep., 430.

The circuit court gave a judgment in favor of the defendant, and the plaintiff has brought the case to this court by writ of error.

The decision of the circuit court as appears by said opinion, was placed upon the ground that the defendant was not in fact owner of the stock, and as the stock register showed that it held the same merely as pledgee, there was no estoppel. Counsel for plaintiff in error, controverts these conclusions, contending that a pledgee of stock is the legal owner thereof; that the register by showing the defendant to be the holder as pledgee, showed it to be the legal owner, having the legal rights and subject to all the legal liabilities incident to ownership.

We think, however, that the error is in the argument of counsel, rather than in the decision of the court. By delivery of a pledge as security for the payment of a debt, the pledgee acquires only a lien or special property in the article or things pledged. (Story on Bailments, ss. 287, 307; 18 Am. & Eng. Enc., 590.) Even where in lieu of delivery an apparent transfer of title is made for the purpose merely of security, the general property remains in the pledgor. 18 Am. & Eng. Enc., 591, note; Cross *v.* Eureka, etc., Canal Co., 73 Cal., 302. True, in the opinion of the Supreme Court of the United States, by Mr. Justice Matthews, in Easton *v.* German American Bank, 127 U. S., 532, it is said that: "Where personal property is pledged, the pledgee acquires the legal title and the possession." From the report of the case it does not appear whether the point was argued or the authorities referred to. Considering the facts of that case it is certainly a question whether or not the one brief sentence quoted has wrought a radical change in the law. But if so still we must hold that in California the law is as we have stated. That rule is adopted by express provisions of the code. Cal. Civ. Code, sections 2872, 2877, 2888, 2889; Cross *v.* Canal Co., *supra*.

The judgment should be affirmed for the reasons given in the opinion above referred to, and it is so ordered.

48 United States Circuit Court of Appeals for the Ninth Circuit, October Term, 1892.

FREDERICK N. PAULY, Receiver of the California National Bank of San Diego, Plaintiff in Error,
vs.
THE STATE LOAN AND TRUST COMPANY (a Corporation).
} No. 137.

In error to the circuit court of the United States for the southern district of California.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the southern district of California and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause be, and the same is hereby, affirmed with costs, and the cause is remanded to said circuit court for such further proceedings as may be necessary in accordance with the opinion of this court.

(Endorsed:) Judgment. Filed Nov. 14, 1893. F. D. Monckton, clerk.

49 In the United States Circuit Court of Appeals for the Ninth Circuit.

FREDERICK N. PAULY, Receiver of the California National Bank of San Diego, Plaintiff in Error,
vs.
STATE LOAN AND TRUST COMPANY, a Corporation, Defendant in Error.
} No. 137. At Law. Petition for Writ of Error to the Supreme Court.

Now comes Frederick N. Pauly, receiver of the California National Bank of San Diego, plaintiff herein, and says that on or about the 14th day of November, 1893, this court entered judgment herein in favor of the defendant and against this plaintiff (affirming the judgment of the circuit court of the United States for the southern district of California theretofore rendered and entered herein against the plaintiff and in favor of the defendant), in which judgment certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors which is hereto annexed and filed herewith.

That this plaintiff has been directed by the honorable Comptroller of the Currency to prosecute a writ of error from said judgment of this court to the Supreme Court of the United States.

50 Wherefore this plaintiff prays that a writ of error may issue in this behalf to the Supreme Court of the United States for the correction of errors herein so complained of, and that a transcript of the record, proceedings, and papers in this cause duly

authenticated may be sent to the Supreme Court as by law and the rules and practice of this court in such case made and provided.

J. WADE McDONALD,
M. A. LUCE,
Attorneys for Plaintiff.

51 *Assignment of Errors.*

In the United States Circuit Court of Appeals for the Ninth Circuit.

FREDERICK N. PAULY, Receiver of the California National Bank of San Diego, Plaintiff in Error,
vs.
STATE LOAN AND TRUST COMPANY, a Corporation, Defendant in Error.
} No. 137. At Law.

Frederick N. Pauly, receiver of the California National Bank of San Diego, the plaintiff in this action in connection with his petition for a writ of error herein to the Supreme Court of the United States, makes the following assignment of errors which he avers occurred upon the trial of this cause and the rendition and entry of judgment therein in this court, to wit:

1. The court erred in rendering and entering judgment in favor of the defendant and against the plaintiff.

J. WADE McDOLALD,
M. A. LUCE,
Attorneys for Plaintiff.

(Endorsed:) In the United States circuit court of appeals for the ninth circuit. No. 137. At Law. Frederick N. Pauly, receiver of the California National Bank of San Diego, plaintiff in error, *vs.* State Loan and Trust Company, a corporation, defendant in error. Petition for writ of error to the Supreme Court and assignment of errors. Filed Nov. 9, 1894. F. D. Monckton, clerk.

52 *Order Allowing Writ of Error.*

In the United States Circuit Court of Appeals for the Ninth Circuit.

FREDERICK N. PAULY, Receiver of the California National Bank of San Diego, Plaintiff in Error,
vs.
STATE LOAN AND TRUST COMPANY, a Corporation, Defendant in Error.
} No. 137. At Law.

On this 9th day of November, 1894, comes the plaintiff, by J. Wade McDonald, his attorney, and files herein and presents to the court his petition praying for the allowance of a writ of error in-

tended to be urged by him, praying also that a transcript of the record, proceedings, and papers upon which the judment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as may be proper in the premises.

Upon consideration whereof and it appearing to the court from said petition and other evidence satisfactory to the court that the honorable Comptroller of the Currency has directed said plaintiff to prosecute a writ of error to the Supreme Court from the judgment of this court herein, the court does allow the writ of error prayed for, and without bond on the part of the plaintiff, and the clerk is directed to issue the writ of error accordingly.

(Signed) JOSEPH McKENNA,
Circuit Judge and Judge of Circuit Court of Appeals.

53 (Endorsed:) Circuit court of appeals of the ninth circuit. No. 137, at law. Frederick N. Pauly, receiver of the California National Bank of San Diego, plaintiff in error, *vs.* State Loan and Trust Company, a corporation, defendant in error. Order allowing writ of error and directing clerk to issue same. Filed Nov. 9, 1894. F. D. Monckton, clerk.

54 United States Circuit Court of Appeals for the Ninth Circuit.

FREDERICH N. PAULY, Receiver, etc., Plaintiff in Error,
vs.
THE STATE LOAN AND TRUST COMPANY, a Corporation.
} No. 137.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the foregoing fifty-three pages, numbered from 1 to 53, inclusive, to be a full, true, and correct copy of the record and all proceedings in the above-entitled cause in our said circuit court of appeals, and that the same together constitute the return to the annexed writ of error.

Attest my hand and the seal of said United States circuit of appeals for the ninth circuit, at San Francisco, this 13th day of November, A. D. 1894.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

55 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the United States circuit court of appeals for the ninth circuit, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said United States circuit court of appeals, before you or some of you, between Frederick N. Pauly, receiver of the California National Bank of San Diego, plaintiff in error, and The State Loan and Trust Company, a corpora-

tion, defendant in error, a manifest error hath happend, to the great damage of the said Frederick N. Pauly, receiver of the California National Bank of San Diego, plaintiff in error, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Supreme Court, together with this writ, so that you have the same at the city of Washington, in the District of Columbia, on the seventh day of January next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal United States Circuit Court of Appeals, Ninth Circuit.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 9th day of November, in the year of our Lord one thousand eight hundred and ninety-four.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

Allowed by—

JOSEPH McKENNA,
United States Circuit Judge and Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

56 *The Answer of the Judges of the United States Circuit Court of Appeals for the Ninth Circuit.*

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said United States circuit court of appeals for the ninth circuit, within mentioned, at the day and place within contained, in a certain schedule, to this writ annexed, as within we are commanded.

By the court.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

[Endorsed:] D. No. —. In the United States Supreme Court. Fred'k N. Pauly, rec'r, &c., plaintiff in error, *vs.* State Loan & Trust Co., defendant in error. Writ of error. Filed Nov. 9th, 1894. F. D. Monckton, clerk U. S. circuit court of appeals for the ninth circuit.

57 UNITED STATES OF AMERICA, *ss*:

The President of the United States to the State Loan and Trust Company, a corporation, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, in the District of Columbia, on the 7th day of January next, pursuant to a writ of error filed in the clerk's office of the United States circuit court of appeals for the ninth circuit, wherein Frederick N. Pauly, receiver of the California National Bank of San Diego, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph McKenna, United States circuit judge for the ninth circuit, this 9th day of November, A. D. 1894.

JOSEPH McKENNA,
United States Circuit Judge and Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

58 [Endorsed:] D. No. —. In the Supreme Court of the United States. Fred'k N. Pauly, rec'r, &c., pl'ff in error, *vs.* State Loan & Trust Co. Citation. Filed Nov'r 12th, 1894. F. D. Monckton, clerk U. S. circuit court of appeals for the ninth circuit.

I hereby acknowledge receipt of a copy of the within citation this 10th day of November, 1894.

W. P. GARDINER,
Att'y for Defendant in Error.

Endorsed on cover: Case No. 15750. U. S. circuit court of appeals, ninth circuit. Term No., 866. Frederick N. Pauly, receiver of the California National Bank of San Diego, plaintiff in error, *vs.* The State Loan & Trust Company. Filed December 17th, 1894.